IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC No.768 of 2008

BUTAN SHARMA son of Late Ramanand Sharma, resident of village Puran, P.S. Karpi in the district of Arwal …….. Petitioner

Versus

1. THE STATE OF BIHAR, through the Chief Secretary, Government of Bihar, Patna
2. The Home Secretary, Government of Bihar, Patna
3. The Deputy Secretary, Home (Police) Department, Government of Bihar, Patna
4. The District Magistrate, Arwal, Bihar
5. The Superintendent of Police, Arwal, Bihar
6. The Jail Superintendent of Divisional Jail, Jehanabad, Bihar

…. Respondents

For the Petitioner : Mr. Akhileshwar Prasad Singh, Advocate

For the Respondents: Mrs. Nivedita Nirvikar, G.P. XVI

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P R E S E N T

Hon'ble the Chief Justice
&
Hon'ble Mr. Justice Kishore K. Mandal

Dated, the 23rd September, 2008.

Mrs. Nivedita Nirvikar, Government Pleader XVI fairly concedes that the detention order dated 13th May, 2008 issued under section 12(2) of the Bihar Control of Crimes Act, 1981 (for short, 'Act of 1981') was not served upon the detenu within the time prescribed under section 17 of the Act of 1981. She further admits that this lapse vitiates the order of detention despite the fact that the said order of detention was approved by the State Government on 23rd May, 2008.

2. In our view, in the light of the admitted position that

the order of detention dated 13th May, 2008 issued under section 12(2) of the Act of 1981 was served upon the detenu on 9th June, 2008, the detention of the petitioner has to be held to be illegal and is quashed and set aside. Upon quashing the order dated 13th May, 2008, the subsequent orders dated 23rd May, 2008 and 14th July, 2008 cannot stand and have to be set aside and, are set aside.

3. The petitioner shall be released forthwith, if not required in any other case.

4. Writ petition is disposed of, accordingly.

R.M. Lodha, CJ.

Kishore K. Mandal, J.

Anil/

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